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292468—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 680

IRVING J. REUTER, PETITIONER

v.

THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 14–17) is reported in 34 F. Supp. 1014.

JURISDICTION

The judgment of the court below was entered October 7, 1940 (R. 25). The petition for writ of certiorari was filed January 6, 1941 (R. 25). The jurisdiction of this Court is invoked under Section 3 (b) of the Act of February 13, 1925, as amended by the Act of May 22, 1939.

QUESTION INVOLVED

Petitioner declared himself trustee of certain securities for the benefit of his wife and parents, reserving the right to terminate the trust at the

expiration of five years and retaining broad powers of control over the corpus. The question is whether the income of the trust for the year 1934 is taxable to petitioner.

STATUTE INVOLVED

Revenue Act of 1934, c. 277, 48 Stat. 680:

> SEC. 22. GROSS INCOME.
>
> (a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. In the case of Presidents of the United States and judges of courts of the United States taking office after June 6, 1932, the compensation received as such shall be included in gross income; and all Acts fixing the compensation of such Presidents and judges are hereby amended accordingly.
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> * * * * *

(U. S. C., Title 26, Sec. 22.)

STATEMENT

The special findings of fact of the Court of Claims (R. 8–13) may be summarized as follows:

Petitioner established a trust in February 1932, called "The Janiry Trust Fund", of which he designated himself trustee. The trust consisted of various securities which petitioner then owned, including 13,527 shares of stock of the General Motors Securities Company. The declaration of trust provided that the income from the General Motors Securities stock should be distributed nine-tenths to petitioner's wife, not to exceed $30,000 in any year, and one-tenth to his mother and father, not to exceed $3,000 in any one year; and that any income in excess of this amount should become part of the corpus of the trust (R. 8–9). The trust was to be irrevocable for a period of five years from January 1, 1932, but it was to terminate at any time after the expiration of such period if the petitioner gave notice of termination at least thirty days prior to January 1, 1937. If the petitioner died before January 1, 1937, or failed to give notice of termination, the trust was to continue until January 1, 1942, at which time it was to terminate and the property was to be paid over to the petitioner's wife, with a provision for the payment of $3,000 per annum to petitioner's parents for life. If the petitioner's wife should die prior to the termination of the trust and the petitioner survive her, the trust was to continue in full force and effect and the income otherwise distributable to her was, in the absolute discretion of the trustee, either to accumulate and

become corpus of the trust, or to be distributed to the petitioner or his parents (R. 10–11).

The trustee had power to sell, assign, encumber or convey the property in the trust as he deemed best without obtaining any order of court for such action and without regard to whether or not the securities purchased constituted proper and legal trust investments under the applicable state law. The trustee was not to be held liable for any loss except loss resulting from bad faith or willful neglect (R. 11).

The trust instrument further provided that the trustee was authorized in his sole discretion to invade the corpus of the trust for the benefit of the beneficiaries or their families, at any time that, in his judgment, their proper maintenance and support required such action (R. 11). It also provided that no part of the trust estate should be subject to transfer by any beneficiary or be liable in any manner for any debt of any beneficiary (R. 11–12). In the event of petitioner's death before termination of the trust, his wife was to become the trustee (R. 25).

In his income tax return for 1934, petitioner did not report any of the income received by the trust. Subsequently he consented to the assessment of a deficiency of $1,258.19, representing the tax on income for the year 1934 accumulated by the trust. Petitioner paid that deficiency and it is not in issue in this case (R. 12). The present contro-

versy concerns a deficiency of $10,038.93 assessed against petitioner, representing the tax on income received by the trust during the year 1934 and paid over to the beneficiaries. Petitioner paid this deficiency, with interest, filed a claim for refund which was rejected, and then brought suit in the Court of Claims. The court sustained the action of the Commissioner in assessing the deficiency and accordingly dismissed the petition (R. 12–13).

ARGUMENT

This case, as the court below held (R. 15–17), falls directly within the decision of this Court in *Helvering* v. *Clifford,* 309 U. S. 331. Although the trust instruments in the two cases differ in some details, the determinative fact here, as there, is that the taxpayer "retained the substance of full enjoyment of all the rights which previously he had in the [trust] property" (309 U. S. at 336). The grantor himself was the trustee and, as such, he exercised broad powers of control over the administration of the trust, including the investment and reinvestment of its funds; he was to be liable for no loss other than loss occasioned by his bad faith or willful neglect. The beneficiaries of the trust were his wife and parents, the natural objects of his bounty. He had a right to terminate the trust at the end of five years. In the meantime, in his sole judgment as trustee, he could declare that any beneficiary or any member of the family of any beneficiary—and this would include

himself—was in need of funds "by reason of illness, misfortune or any other emergency" (R. 21) and could thereupon sell whatever portion of the trust property he deemed necessary and deliver the proceeds to the needy beneficiary or member of the family. In view of these provisions of the trust, it is plain that the declaration of trust here, as in the *Clifford* case, amounted at best to a "temporary reallocation of income within an intimate family group" (309 U. S. at 335).

The fact that a small part of the trust income in this case was to be paid to petitioner's father and mother, while all the income in the *Clifford* case was to be paid or held for the benefit of the taxpayer's wife, is not a distinguishing factor of substance. Compare *First National Bank of Chicago* v. *Commissioner,* 110 F. (2d) 448 (C. C. A. 7th), where the rule of the *Clifford* case was applied to a trust created for the benefit of the grantor's brother and sister, and the widow of a deceased brother. While the grantor in the *Clifford* case was not required to distribute income to the beneficiary, except such amounts as he deemed best, any undistributed or accrued income and any proceeds from the investment of such income were to be treated as property of the beneficiary. Thus the taxpayer there, as here, could not use any trust income for his own benefit.

The Board of Tax Appeals has considered the taxability of the income of the trust here involved

for other years and has reached the same conclusion as did the court below. *Reuter* v. *Commissioner,* memorandum opinion of the Board of Tax Appeals, decided July 30, 1940, unreported, now pending on appeal to the Circuit Court of Appeals for the Fifth Circuit.

The decision in the *Clifford* case made it unnecessary for the Court of Claims to consider the applicability of Section 166 of the Revenue Act of 1934, and forecloses the contention that the application of Section 22 (a) in these circumstances is unconstitutional.

CONCLUSION

The decision of the court below is in accord with the decision of this Court in *Helvering* v. *Clifford*, 309 U. S. 331. There is no conflict of decisions. The petition should therefore be denied.

Respectfully submitted.

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